

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TINA M. NEFF)	
Claimant)	
VS.)	
)	Docket No. 168,596
UNITED METHODIST HOMES, INC.)	
d/b/a UNITED METHODIST HOME)	
Respondent)	
AND)	
)	
KANSAS ASSOCIATION OF HOMES FOR THE)	
AGING INSURANCE GROUP, INC.)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent and its insurance carrier appeal from the October 23, 1997 Award entered by Administrative Law Judge Floyd V. Palmer. The Appeals Board heard oral argument on May 13, 1998.

APPEARANCES

Claimant, having settled her claim with respondent, did not appear. Respondent and its insurance carrier appeared by their attorney, Jeffrey A. Chanay of Topeka, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Jeff K. Cooper of Topeka, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopts the stipulations listed in the Award by the Administrative Law Judge. Also, the parties stipulate to the reasonableness of the December 2, 1993 settlement with claimant. The Fund stipulates to the compensability of the claim but only for a single date of accident, that being the February 18, 1991 date.

ISSUES

The Award entered by the Administrative Law Judge found the Fund had no liability for this claim based upon a finding that respondent had not met its burden of proving that claimant had a second accident. Respondent appeals that finding. The issues for determination by the Appeals Board are:

- (1) Whether claimant, after February 18, 1991, suffered new accidental injuries to her back.
- (2) What is the nature and extent of the Workers Compensation Fund's liability, if any?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed.

The Award of the Administrative Law Judge sets out his findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Appeals Board finds them to be accurate and appropriate, and it adopts the findings and conclusions of the Administrative Law Judge as its own as if specifically set forth herein. Specifically, the Appeals Board agrees that respondent has not sustained its burden of proof that claimant suffered a second accident. Instead, the flare-ups on February 11, 1992 and May 18, 1992 are found to have been the natural and probable consequence of the original February 18, 1991 injury. That conclusion having been reached, liability against the Fund is denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Floyd V. Palmer dated October 23, 1997 should be, and is hereby, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeffrey A. Chanay, Topeka, KS
Jeff K. Cooper, Topeka, KS
Office of Administrative Law Judge, Topeka, KS
Philip S. Harness, Director